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No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

RALPH ROGER BERGMAN

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

To The United States Court Of Appeals For The Federal Circuit And The Claims Court Case # 84-78 C

PETITION FOR WRIT OF CERTIORARI

IN THE ALTERNATIVE: PETITION FOR AN EXTRORDINARY WRIT OF MANDAMUS

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QUESTIONS PRESENTED

1) Is it proper, fair and constitutional for Respondent to violate the laws of the United States Civil Service and the Tucker Act by litigating with perjury, fraud, deceit, false employment records, sophistry, and support of clandestine court document sabotage to mislead Administrative Appeals Authorities and Courts into void judgements and then invoke sovereign immunity by claiming his litigation was in intentional tort and to thus achieve Petitioner's career – murder and economic ruin?

2) Does Respondent's litigation in such bad faith under sovereign immunity violate Petitioner's right to due process under the 5th and 14th Amendment to the United States Constitution?

3) Would substantial justice be served under these circumstances for the Supreme Court to invoke precedent in *Klapprott v. U.S.* 335 U.S. 601 (1948) and vacate the void 1982 judgement of the U.S. Court of Claims against Petitioner under Federal Rule of Procedure 60(b)(6) or in the alternative reverse the void judgement under Extraordinary Writ procedures specified in 28 U.S.C. 1651?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 2

JURISDICTION 2

STATUTORY AND REGULATORY PROVISIONS INVOKED 2

STATEMENT OF THE CASE 3

Introduction 3

Case History 4

Classification Appeals 8

The 1975 Reinstatement 8

ABUSE OF DISCRETION 9

RESPONDENT'S BAD FAITH LITIGATION BEFORE THE SUPREME COURT OF THE UNITED STATES 14

PETITIONER BANKRUPTED 16

REASONS FOR GRANTING THE WRIT 18

APPLICATION OF RULE 60(b)(6) FOR SUBSTANTIAL JUSTICE 20

TABLE OF CONTENTS–Continued

Page

LEGAL ARGUMENT, VACATE JUDGMENT..... 21

LEGAL ARGUMENT, LAW VIOLATIONS – RIF CANCELLATION 27

DENIAL OF DUE PROCESS..... 28

CONCLUSION 29

PRAYER FOR RELIEF 30

TABLE OF AUTHORITIES

Page

CASES CITED:

Ainsworth v. U.S., 185 Ct.Cl. 110, 399 F.2d 176 (1968) 28

Arnet v. Kennedy, 416 U.S. 134, 95 S.Ct. 1633 (1974) 27

Bergman v. United States, Ct.Cl. #84-78 (1982), *Affd.* 706 F.2d. (Ct.App.Fed.Cir. 1983) *cert. den.* (1983) 4

Bergman v. United States, 567 F.Supp. 460 (D.Colo. 1983) *Affd.* 751 F.2d. 314 (1984) *cert.den.* S.Ct.#85-44 (1985) 5, 8, 19, 22, 28

Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701 (1972) 27

Boughner v. Secretary of H.E.W., (CA3d, 1978) 572 F.2d 976 22

Brady v. State of Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963) 28

Bray v. U.S., 515 F.2d 1383, 207 Ct.Cl. 60 (1975) 27

Bros. Inc. v. W.W. Grace Mfg., Co., 320 F.2d 594 (5th Cir. 1963) 26

Cetron Electronic Corp. and Emil Makar, Ct.Cl.Order 520-69 (1975) 13

Crotty v. Kelley, 443 F.2d 214 (5th Cir. 1971) 29

Fitzgerald v. Hampton, 467 F.2d 755 (U.S.D.C. 1972) 27

Gonzales v. U.S., 348 U.S. 407, 75 S. Ct. 409 (1955) 29

Henderson v. U.S., 175 Ct.Cl. 69 (1966) 27

In re Ferguson, 96 Cal. Rptr. 595, 487 P.2d 1234 (1971) 28

Klapprott v. United States, 335 U.S. 601 (1948/49) 20, 22, 26, 29

TABLE OF AUTHORITIES–Continued

Page

Kozart v. U.S., 458 U.S. 458 F.2d 39 (Ct.Cl. 1972) 27

L.P. Steuart, Inc. v. Matthew, (CA DC, 1964) 329 F.2d 234, 8FR Serv2d 60b.31, Case 1, *cert denied* (1964) 379 U.S. 824, 85 S. Ct. 50, 13 L.Ed.2d 35 24

Laguna Royalty Co. v. Marsh, 350 F.2d 817 (5th Cir. 1965) 26

Laskey–v. Continental Products Corp., 804 F.2d 250 (3rd Cir. 1986) 23

Leathers' Sons v. Goldman, 252 F.2d 188 (6th Cir. 1985) 26

Lepkowski v. U.S. Department of Treasury, 804 F.2d 1310 (D.C.Cir. 1986) 23

Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340 at 342 28

Newman v. U.S., 143 Ct.Cl. 784 (1958) 27

Pascal v. U.S., 211 Ct.Cl. 260, 543 F.2d 1284 (1976) 27

People v. Ruthford, 121 Cal. Rptr. 216, 534 P.2d 1341 (1975) 28

Rasmussen v. U.S., 211 Ct.Cl. 260, 543 F.2d 134 (1976) 27, 29

Schauss v. Metals Depository Corp., 757 F.2d 649 (1985) 26

Service v. Dulles, 354 U.S. 363 (1975) 27

U.S. v. Bouziden, 108 F.Supp. 395 (1952) 28, 29

Wine v. United States, 705 F.2d 366 (10th Cir. 1983) 6

STATUTES CITED:

5 C.F.R. Chapter # 351 (1973) 2, 3, 8, 12, 18, 19, 27

5 C.F.R. 752.104 et seq. 27

TABLE OF AUTHORITIES–Continued

Page

5 U.S.C. § 552(a) 2

5 U.S.C. § 5596(b) 28

5 U.S.C. § 7501 27

28 U.S.C. § 1254 2

28 U.S.C. § 1651 ..... 2, 30

28 U.S.C. § 2680(h) 2, 5

RULES CITED:

Federal Rule of Civil Procedure Key # 2641 23

Federal Rule of Civil Procedure Key # 2651 23

Federal Rule of Civil Procedure Key # 2656 26

Rule 60(b)(6) 20, 21, 22, 23, 25, 26

MISCELLANEOUS:

3 Barron & Holtzoff, Federal Practice and Procedure § 1329 (Wright ed. 1958) 26

Moore's Federal Practice, section 60.19 23

Moore's Federal Practice, section 60.25[2] 25

Moore's Federal Practice, section 60.27[2] 22, 24

Moore's Federal Practice, section 60.27[3] 26

Federal Tort Claims Act § 2680(h) 24

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PETITION FOR WRIT OF CERTIORARI

IN THE ALTERNATIVE: PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

Petitioner Ralph Bergman, respectfully prays that a writ of certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Federal Circuit entered in this proceeding on December 15, 1988 and the Claims Court entered in this proceeding on March 9, 1988 for the purpose of vacating the void judgement of the U.S. Court of Claims dated June 16th, 1982.

In the alternative, Petitioner prays that an Extraordinary Writ of Mandamus issue to reverse the void judgement of the U.S. Court of Claims dated June 16th 1982.

OPINIONS BELOW

The denial order to vacate by the Court of Appeals for the Federal Circuit was entered on December 15, 1988 and appears in Appendix A. The opinion of the Court of Claims denying vacating its void judgement of June 16, 1982 was entered on March 9, 1988 and appears in Appendix B.

JURISDICTION

The Order of the Court of Appeals for the Federal Circuit was entered on December 15, 1988. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1) and 28 U.S.C. § 1651.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Constitution of the United States
28 U.S.C. § 1254 - Jurisdiction to file in Supreme Court
5 U.S.C. § 552(a) - Privacy Act
TUCKER ACT - Jurisdiction to sue in the Court of Claims
5 C.F.R. #351 (1973) - Federal Regulation on Reduction-In-Force
28 U.S.C. § 2680 (h) - Federal Tort Claims Act
28 U.S.C. § 1651 - Extraordinary Writ authorization

STATEMENT OF THE CASE:
Introduction

This is a Federal Civil Service case arising from two illegal Reduction-In-Force (RIF) actions against Petitioner in 1969 and in 1973. The case is extraordinary because it exposes Respondent's actions to circumvent the Civil Service laws by spending 15 years of litigation in bad faith to protect the results of his own incompetence to the detriment of this Petitioner in most substantial violation of the entire Civil Service Law.

To understand the full impact of this case on the United States Civil Service and its thousands of employees, it must be realized that the key to Respondent's illegal actions discussed below lies in Respondent's own admission to the Court of Claims that he was unaware for 2 years after he separated Petitioner under purported Reduction-In-Force (RIF) on August 31st 1973, that a RIF had occurred and that he was required to follow the laws that govern RIF procedures under 5 C.F.R. Chapter #351 (1973), which he admitted he failed to do.

Petitioner was employed for professional engineering work from 1962 to 1977 but his official position descriptions and competitive levels reflected only physics duties. These false employment records allowed Respondent to manipulate the outcome of the reduction-in-force (RIF) actions. When Petitioner protested, he was threatened with termination which occurred in August of 1973.

Petitioner was reinstated in 1975 on Civil Service Commission (CSC) order to what Respondent's records called a "paper job" that was scheduled for abolishment through another RIF. Once back on the job, Petitioner was persecuted into disability retirement, which occurred in 1977. Petitioner sued in the Court of Claims for cancellation of the 1968 and 1973 RIF as improper personnel

actions under jurisdiction of the TUCKER ACT but the Courts found for Respondent.

This case has national importance as its final outcome may determine if the U.S. Civil Service is to survive as a viable, fair and honest tool for citizens to serve their country or if Respondent's methods of law violations will give him a free hand to destroy the spirit and intent of the law that created the service using methods of litigation in tort that violate the constitutional right to due process.

Case History:

Petitioner did not understand civil service appeals in 1968 and so he lost his appeal for the first improper RIF in 1968 but the 1973 RIF was cancelled in part with Petitioner assigned to a GS-7 part-time engineering position. This was not the best offer to which Petitioner was entitled to by law and the position was created for abolishment so that Petitioner could be separated again through RIF, according to the writings of Respondent's personnel officer, which are in evidence at the U.S. Court of Claims.

Respondent's Department of Commerce secretarial audit of 1976 admitted that his own officers litigated in bad faith to mislead Civil Service Administrative Appeals Authorities, but restitution or RIF cancellation was not initiated. Petitioner filed a complaint in the U.S. Court of Claims in 1978 under jurisdiction of the Tucker Act for cancellation of the improper 1968 and 1973 RIF actions.

The U.S. Court of Claims (now the U.S. Claims Court) found for Respondent in *Bergman v. United States*, Ct.Cl. Case #84-78 (1982); *Affd.* 706 F.2d 319 (Fed.Cir.

1983) although Respondent's responsible personnel officer admitted at trial that Respondent was unaware until July 1975, 2 years after the August 1973 RIF, that a RIF had actually occurred, which was later admitted to the court in writing by his counsel. To protect this incompetence, Respondent based his litigation in the Court of Claims and the Court of Appeals for the Federal Circuit on tort through pleading in bad faith using deceit, sophistry, false work records, support of clandestine court document sabotage, fraud and perjury to mislead the courts for which Respondent invoked sovereign immunity in 1984 under exception (h) of the Federal Tort Claims Act, *Bergman v. United States*, 567 F.Supp. 460 (D.Colo. 1983) *Affd.* 751 F.2d 314 (1984).

The U.S. Claims Court denied Petitioner's motion to vacate the 1982 judgement on March 9, 1988, citing as grounds: " . . . The opinion of the Circuit Court has been carefully examined and it is noted that the "intentional tort" language, 751 F.2d at 317, is addressed to "Bergman's claim," not to any admission by the government as to the validity of the merits underlying the claim . . . ". This is a falsity and reflects how Respondent misled the Court litigation as Petitioner never claimed intentional tort.

The claim of intentional tort was made *prima facie* by Respondent and repeated in Respondent's motion to uphold dismissal (undated) in case #83-2429, Court of Appeals for the Federal Circuit, on pages 3 and 4.[1]

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[1] Citing from Respondent's pleading in the 10th Circuit on case #83-2429:

"Judge Arraj held that plaintiff-appellant's claim was barred by the immunity retained under 28 U.S.C. § 2680(h)

(Continued on following page)

Respondent pleaded erroneously during the 1973 RIF appeal that Petitioner was a low level support person who could not write properly in English and had no professional engineering education or experience. The record shows that Petitioner is a registered professional engineer in Colorado #8711 since 1968 and holds a degree in Physics from the University of Colorado since 1962.

The Court of Claims deleted from consideration Respondent's post trial admission that Petitioner worked as GS-12 Professional Electronics Engineer in 1968 and as a GS-14 Professional Electronics Engineer in 1973 and that the Civil Service Commission (CSC) in 1976 certified to Petitioner's true international duties, which included negotiations with representatives of the governments of Mexico, Canada, Great Britain and France to enlist their cooperation in his engineering work for NASA and the U.S. Air Force.

(Continued from previous page)

and supported his position by citing *Wine v. United States*, 705 F.2d 366 (10th Cir. 1983). The basis for his holding, of course, is the fact that the acts which plaintiff-appellant has labeled as negligent are more appropriately described as intentional in nature. Specifically, the alleged suppression of information favorable to Bergman's appeal of his termination, would amount to misrepresentation, deceit, libel or slander. The same would be true of perjury or an attorney's misrepresentation of law to the Court. The alleged advise given to the Assistant Secretary of Commerce that she should deny Bergman's relief to which he was entitled, if actionable at all, would constitute interference with contract rights.

It is of course, axiomatic, that a plaintiff may not circumvent the immunity fro(m) suit from intentional tort which is retained by § 2680(h) by merely couching his complaint in terms of negligence. Accordingly, the Court did nor err when it dismissed that portion of Bergman's complaint which was based on negligence".

The Court of Claims also closed its eyes to Respondent's secret audit which surfaced during the discovery phase and found Petitioner qualified as GS-11 Professional Electronics Engineer. While based on erroneous physicist duty statements and competitive levels, it credited some of Petitioner's actual work. The audit result contradicted Respondent's false submissions to the appeals authorities, and he withheld the results of the audit from the Civil Service appeal examiners – but the court would not recognize these facts in evidence to form its 1982 opinion. Instead the Court held to the tort-contaminated erroneous opinion of the CSC appeals authority that credited Petitioner with a GS-7 engineering skill as the highest level of his engineering competence and prejudiced the case for Respondents.

After the 1973 RIF appeal concluded, the CSC held an audit on Petitioner's actual work and found that none of his official duty statements met accuracy requirements of the CSC. New duty statements were written retroactively but the CSC refused to assign corrected competitive levels to the new duty statements. As a result, Petitioner's official personnel folder now contains correct duty statements with false classifications that concerned former inaccurate statements. A 1976 commerce secretarial audit estimated correct classification of the new duty statements and certified Petitioner qualified as GS-13 Professional Electronics Engineer in 1973.

The Federal classification expert who served on the secretarial audit by Asst. Commerce Secretary, the Honorable Elsa Porter, Carter Administration, evaluated the new duty statements at trial and assigned correct classifications. In his submissions to the Court of Claims, Respondent agreed with these findings which certified Petitioner as GS-12 Professional Electronics Engineer

before the 1968 RIF and as GS-14 Professional Electronics Engineer before the 1973 RIF.

This shows that pleadings of Respondent to the CSC in 1968 and in 1973 were a hoax, made the hearing a sham and obstructed justice. Respondent then denied Petitioner the right to have these true classifications entered in his Official Personnel Folder, see *Bergman supra*, and Supreme Court case #85-44.

Classification Appeals:

Petitioner attempted to correct his false duty statements and competitive levels while employed but Respondent's officers opposed correction. Petitioner was threatened with termination in 1969 for his attempts to gain correct employment records, an admitted fact by Respondent, a common practice according to CSC examination of Respondent's personnel department practices in a 1974 audit (Ct.Cl.Ex.#109-13).

5 C.F.R. #351 (1973) mandates that false duty statements and competitive levels must be corrected before a RIF is initiated. Petitioner had grievances pending in 1973 that requested record correction. Respondent waited 6 months after Petitioner was separated and then persuaded the examiner not to address the issue and so prejudiced the entire August 1973 CSC RIF appeal.

The 1975 Reinstatement:

The 1975 "reinstatement" was a sham. Respondent knew, by his own admission, that the August 1973 RIF was improper, but after "reinstatement" in 1975, Respondent denied work assignments to Petitioner who was forced to sit at his desk for 6 months doing nothing. When Petitioner complained to the CSC, Respondent

assigned work that was not possible to accomplish. Petitioner was to solve missile stability problems with a specialized computer program which "blew up" in the computer. The program designer admitted that the program was faulty and could not work. Respondent punished Petitioner for not getting results with the defective tools and assigned an "unsatisfactory" performance rating. This was to counter all of the excellent performance ratings Petitioner received over the years from supervisors and other agencies that contracted for his work.

Next, Petitioner was assigned to solve dynamic radio receiver problems but the technical parameters needed for the work were denied. A partial static circuit diagram was supplied where all component identifications were deleted. Petitioner did the work with estimated parameters and component values and was again punished for "poor performance".

Petitioner became sick and Respondent's physician ordered disability retirement in March 1977.

ABUSE OF DISCRETION

Although Respondent knew that the August 1973 RIF was a hoax, he continued his bad faith litigation in the Court of Claims with fraud, false records, cover-up of the fact that required records did not exist, and he perjured himself with a sworn affidavit that reflected erroneous reduction-in-force data from a different time frame that was not before the Court and not applicable to the litigation.

In this and other ways Respondent misled the Court to abuse its discretion.

1) THE COURT ABUSED ITS DISCRETION by ignoring its own pre-trial order of April 16, 1981 which provided for expert CSC witness testimony whether Respondent's law violations were substantial. Respondent moved the Court to quash the subpeonas ex-parte and Petitioner was served a copy of the motion to quash on the day trial began and after the Court had ordered to quash. His protests were overruled.

AS A RESULT no CSC experts could testify whether Respondent's law violations were substantial and Respondent misled the Court to find that all his law violations were harmless errors. This is almost unbelievable in light of Respondent's later admission to the Court that he ignored all mandated laws on RIF as specified in 5 C.F.R. Chapter 351 (1973).

2) THE COURT ABUSED ITS DISCRETION by dismissing from consideration Respondent's court admissions that Petitioner was a GS-12 Professional Electronics Engineer in 1968 and a GS-14 Professional Electronics Engineer in 1973 while also dismissing Respondent's own 1975 secret audit which certified Petitioner's skills at least on the GS-11 Electronics Engineer level. Instead, the Court held for the purpose of its judgement the tort-contaminated finding of the CSC appeals authority of 1975 that certified the GS-7 Engineer level as Petitioner's top engineering skill level.

AS A RESULT, the Court failed to award the known GS-9 engineering position and failed to recognize the uncontested fact that the 1968 and 1973 RIF, the administrative appeal and the Court litigation was a sham based on false records and that competing employee records mandated by law were never prepared. So, no one could determine accurately what positions Petitioner could

have displaced by law. The Court also refused to recognize that Petitioner, as a GS-14 Electronics Engineer, was qualified to displace a GS-9 Electronics Engineer position, especially since Respondent admitted in post-trial that Petitioner never held a rank below Engineer GS-11 since his employment in 1962.

3) THE COURT ABUSED ITS DISCRETION by issuing an opinion that openly admonished Petitioner for not identifying a position that was a better offer than the part-time GS-7 job CSC awarded in 1975 while supporting Respondent's perjured affidavit that "proved" Petitioner had no displacement rights, an affidavit with over 40 pages of RIF-affected positions which had no connection to the subject litigation. Petitioner was the only employee subjected to RIF on August 31st 1973. Respondent impeached himself on his perjury by admitting at trial that he knew three years before writing the perjured affidavit that the data it contained was from a prior personnel action which he had stipulated at trial had no connection to Petitioner's action before the Court.

AS A RESULT the Court believed only the perjured evidence and used it as the foundation for writing its opinion in support of Respondent's demands.

4) THE COURT ABUSED ITS DISCRETION by dismissing Respondent's admissions that the required records to evaluate Petitioner's displacement rights in August 1973 were never prepared, did not exist, were never examined, were denied to Appeals Authorities, denied to Petitioner, denied to the Court of Claims, and denied to the Court of Appeals for the Federal Circuit just as they were denied to the Supreme Court on Petitioner's motion for certiorari in 1983.

AS A RESULT, the Court of Claims was misled to vigorously chastise Petitioner in its opinion for in fact not

being psychic to examine non-existent records in order to form a substantial and correct conclusion to prove his case. How the court expected him to accomplish this task without his access to the competing employee records which he was entitled to see by law (5 C.F.R.#351 (1973)) and which the court denied him on his motions for production of these documents, (Respondent admitted they were never prepared because he did not know that a RIF had occurred although he had separated Petitioner under a purported RIF), remains a mystery.

5) THE COURT ABUSED ITS DISCRETION by issuing an unrequested (probably ex-parte initiated) Court order to Respondent to reopen proofs retroactively almost one year after trial, after post-trial briefing showed Respondent losing the case, so that Respondent could justify removal of the case-winning full time GS-7 position identified by Petitioner from Court consideration.

AS A RESULT a one-day "Roy Bean" trial convened in 1982 and reopened proofs for Respondent's privilege alone. Petitioner's winning full-time GS-7 position was eliminated by retroactively altering the status of its occupant nine years after the fact. The Court was further misled to litigate for Respondent to guarantee retention of the evidence change, (a) by denying Petitioner the right to respond in defense at that "trial", (b) by again denying Petitioner's demands that Respondent divulge the law-mandated records of the competing employees in his competitive area, (c) by refusing Petitioner the right to cross-examine Respondent at that "trial" to explain the secret code that was printed throughout incomplete available personnel records and (d) by denying Petitioner leave to file a motion invoking equitable estoppel to

preserve the evidence on which he was forced to rely for nine years and to conduct the 1981 trial pro se.

6) THE COURT ABUSED ITS DISCRETION as the Court of Claims Judge appeared before Petitioner and family ex-parte in 1981 after documents certifying Respondent's capricious and arbitrary actions were admitted into evidence. His Honor instructed Petitioner to cite specific cases in his post-trial brief including *Cetron Electronic Corporation, a Delaware Corporation and Emil Makar* (Ct.Cl.order 520-69, 1975) to, in His Honor's approximate words, assure that the evidence introduced that day could not be contested.

AS A RESULT Petitioner complied and the Court labeled Respondent's capricious and arbitrary acts as tortuous and said it lacked jurisdiction to consider them. Petitioner repeatedly denied deliberate tort relative to the RIF but his final denial was sabotaged out of the record by clandestine court document sabotage, see (7) below.

7) THE COURT ABUSED ITS DISCRETION by its denial in 1982 to correct the clandestine Court document sabotage which secretly decapitated from the record Petitioner's post-trial response brief opposing, among other important factors, Respondent's proposed findings of fact and conclusions of law (see photos Appendix C). This silenced Petitioner's voice in opposition. Silence signifies acquiescence to opposing pleadings in a court of law.

AS A RESULT, the Court of Claims found for Respondent and the newly created Court of Appeals for the Federal Circuit ruled on a record it knew was prejudiced for Respondent after Respondent's counsel persuaded the Chief Judge of this Court to abuse his discretion by (a) ruling on the contents of the record his Court was about to review on appeal and (b) usurping jurisdiction from the Court below by denying correction of the sabotage.

8) THE COURT ABUSED ITS DISCRETION again in 1988 by once more denying correction of the sabotaged record during Petitioner's motion for the Courts to vacate their void 1982 judgements.

AS A RESULT Petitioner's 1988 motion and appeal to vacate was maintained in its contaminated state, sanctioning the crime of sabotage. Petitioner's motion for correction of the secret document partition and separation from the record was again dismissed. And so this appeal to the Supreme Court is already prejudiced for Respondent by virtue of the same reasons. How can a citizen conduct any fair hearing when Courts form their opinions "helped" by secret mutilation and decapitation of official court records which aid Respondent and through that method appeal-proof the case for Respondent, while condemning the innocent citizen to eternal defeat? That is justice?

RESPONDENT'S BAD FAITH LITIGATION BEFORE THE SUPREME COURT OF THE UNITED STATES

Respondent apparently disrespects the United States Supreme Court. This is proven by his bad faith litigation before this Honorable Court.

After the Court of Appeals for the Federal Circuit upheld the Court of Claims verdict for Respondent in 1983, Petitioner filed in the U.S. District Court for Colorado for correction of his official work record under the Privacy Act since the Court of Claims had denied Petitioner's motions for correction throughout the litigation from 1978 to 1982.

Respondent persuaded the District Court to dismiss, claiming that the 2 year statute of limitations tolled

before the case was ripe for filing under requirements of the U.S.Code.

The Supreme Court denied Petitioner's motion for certiorari in S.Ct. case 85-44, after Respondent misled the Supreme Court with bad faith pleadings claiming among other reasons, that erroneous work records posed no prejudice to Petitioner and "proving" his argument by reversing unalterable events in time. He also espoused untrue accusations to generate negative images about Petitioner for which Respondent cannot be held accountable due to his sovereign immunity status.

To show that erroneous duty statements did not prejudice Petitioner, Respondent pleaded: " . . . the Court's conclusion was based on the fact that the Civil Service Commission (C.S.C.) had earlier reviewed Petitioner's position descriptions, found them insufficiently detailed in certain respects, and ordered them corrected. As a result of the corrections it was determined that, at the time of the 1973 RIF Petitioner was qualified for electronics engineering positions on the GS-7 level . . . ".[2]

Respondent is impeached *prima facie* by his own evidence. Gvt.Ct.Cl.Ex.#10 shows the CSC awarding Petitioner's part time GS-7 position on July 1975, (identified

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[2] This is not true. Petitioner's Official Personnel Folder (OPF) reflects untruths to this day because none of the 1976 CSC re-written duty statements show correct classification and competitive levels. For example, Respondent admitted to the truth before the Court of Claims that the corrected duty statement for his work in 1973 prior to his RIF is correctly classified as GS-14 Electronics Engineer. To this very day Petitioner's OPF assigns an erroneous classification of GS-11 Physicist to this same duty statement because GS-11 Physicist was the classification of the erroneous 1972 duty statement that was replaced by the 1976 CSC audit. This prejudiced Petitioner's record forever.

for argument's sake as event A) and Gvt.Ct.Cl.Ex.11 shows the CSC work audit occurring on November 5th 1976, (identified for argument's sake as event B). So Respondent's own exhibits certify that first there was event (A) followed by event (B) 1.4 years later. But Respondent pleaded to the Supreme Court that first there was event (B) followed by event (A), which the records show as untrue. May the Supreme Court please take judicial notice of these unalterable facts.

The 1982 Court of Claims opinion cited to support Respondent's arguments is further invalidated as Petitioner has shown that the opinion is a void judgement because of the contaminating bad faith litigation that produced it. Citing the results of prior obstruction of justice to generate sophistry in support of later obstruction of justice does not generate substantial justice under the Constitution of the United States, and it violates due process of law.

Petitioner would have exposed Respondent's erroneous pleadings in 1985 but his Washington counsel did not detect the bad faith arguments and failed to send Petitioner a copy of the pleading, so Petitioner was without knowledge.

PETITIONER BANKRUPTED

Petitioner's Respondent-caused 1975 bankruptcy could have been avoided because in 1974, while out of work, Petitioner was entitled to a GS-7 engineering vacancy. Respondent again certified capriciously that Petitioner was not engineering qualified and denied the

position in favor of a pre-selected candidate in violation of Civil Service law.

Respondent's area personnel officer (APO) informed Petitioner that the job was denied due to Petitioner's refugee background from Germany, that Respondent used Nazi methods more sophisticated than original Nazi methods ever were, and that they were just as effective. The APO then perjured himself at a CSC discrimination hearing by denying the statement to protect his employment but he was quickly ousted by Respondent on "disability".

Later events support the APO's statement. After Petitioner filed for bankruptcy in 1975, Respondent appointed a Civil Service employee to serve as bankruptcy trustee, aided by a federally-hired lawyer from the private sector. They persecuted Petitioner's family until the bankruptcy court issued a restraining order to stop hounding of Petitioner's then 76 year old mother, also a refugee from Nazi persecution, to have her home surrendered to the civil service paid "trustee" for liquidation.

To protect his mother and her home, Petitioner signed a "gun point settlement" (words used by this counsel) which assigned proceeds of his home liquidation to the "trustee" and he surrendered all rights that bankruptcy law provided for him to end his mother's persecution. In this there is little difference between Respondent's actions and German actions in 1938 to rob Petitioner's family of all possessions. As a result, Petitioner lost a total of three homes, the first in Germany in 1938 due to the regime, the second in 1968 due to the illegal 1968 RIF and the third in 1976 due to the illegal 1973 RIF and Respondent's hoax on the law.

The persecution is not over. The "gun point" settlement forced surrender of $4000 of back pay from the "reinstatement", and left Petitioner without funds to hire counsel to defend against Respondent's career murder – while Respondent's hired private lawyer lined his personal pockets with $5000 from the home liquidation. Then Respondent's IRS demanded $300 tax on "profit" Petitioner supposedly made on the home liquidation. When Petitioner protested, Respondent's IRS raised the claim to $3000. Since then, Respondent's IRS has elevated the demand to $9000.

The persecutions Respondent used to cause Petitioner's "retirement" are addressed in the section entitled "The 1975 Reinstatement".

All of the above shows the most extraordinary nature of this case and how Petitioner was made to suffer by Respondent. Who said "it" could not happen here?

REASONS FOR GRANTING THE WRIT

To allow the void judgement of the Court of Claims to stand would endorse lawlessness in litigation. Respondent's own admissions attest to this. It would also make a mockery of the Civil Service laws since Respondent has admitted that when he separated Petitioner in August of 1973 he "was unaware" that he had subjected Petitioner to Reduction-In-Force (RIF), yet he separated Petitioner on RIF grounds.

It is undisputed and an admitted fact that Respondent never prepared the mandated records of competing employees under 5 C.F.R. Chapter #351 (1973) and he has admitted that he never examined his records to see what positions Petitioner could have displaced when affected

by the illegal 1973 RIF. This apparently certifies to the incompetence of his officers. Therefore Respondent knows that he stands in violation of the mandated procedure applicable to RIF situations addressed in 5 C.F.R. Chapter #351 (1973) and this, by law, calls for cancellation of the illegal personnel action.

Second, there is Respondent's litigation in bad faith before the CSC appeals authorities, the Court of Claims, the Court of Appeals for the Federal Circuit and the Supreme Court of the Untied States to cover up his folly. To cover his tracks, Respondent used deceit, sophistry, false employment records, employee records from an unconnected RIF action, support of secret document sabotage, fraud and perjury to hoax the Courts to find in his favor.

This case shows neither justice nor fairness nor adherence to the law that is fundamental to our justice system. But this case is not just about this Petitioner. It is about the destruction of the United States Civil Service and the rights enjoyed by all that serve under it and therefore it is significant to every Civil Service employee who serves the United States.

And this case is about the destruction of our Court system through attack by those that believe they are superior to the law and to the Constitution.

Career murder through misuse of assumption of truth under sovereign immunity is not what the "founding fathers" intended for loyal servants of these United States. Aside from the blatent law violation of Respondent, *Bergman v. United States* reflects a dark shadow of discrimination, persecution and degeneration of the moral code that in some respects rivals what this immigrant experienced in Germany between 1933 and 1939 before he fled to freedom.

There is no embellishment here, no desire for revenge or punishment of anyone. Petitioner has presented only admitted and unalterable established facts and only what Respondent states. All Petitioner asks here is that justice be served in his case, the justice he believes to be his right under the Constitution, the justice he craved when he came to America, the justice that will make him whole again and allow him in the twilight of his years to serve his country once more to the best of his ability.

The circumstances here are more than extraordinary, they are almost unbelievable and the void judgment of the Court of Claims has bestowed extreme hardship on this Petitioner. Petitioner believes that trials should be conducted according to the rules of the Court, the rules of Civil Procedure and the Rules of Evidence in truth and honesty, and those rules that this Honorable Court established through precedent in *Klapprott v. United States*, 335 U.S. 601 (1948). Courts should not dismiss uncontested and admitted facts that support Petitioner, while relying on litigation in bad faith to arrive at a verdict that supports Respondent.

There is no contest here. Respondent has admitted to ignoring all Civil Service law applicable to reduction-in-force procedures and he has pleaded intentional tort for his litigation in bad faith. The way he misled the Supreme Court in 1985 also attests to this. Thus true justice should be served and Petitioner's motion for a writ of certiorari should be granted in the interest of fairness and substantial justice or, in the alternative, the erroneous judgement of the Court of Claims should be reserved.

APPLICATION OF RULE 60(b)(6) FOR SUBSTANTIAL JUSTICE

Petitioner obtained legal advice as best as he could, but justice in this case seems to be what a party can

afford. Petitioner's present pension check of $585/mo cannot afford lawyers. He was recently ridiculed by a prestigious Washington law firm that the 100 dollars he offered for comment on this brief did not even cover the cost of the phone call.

None of the lawyers he hired since 1982 advised him of his rights under Rules of Federal Procedure #59 and #60. It was not this Petitioner's failure to act "timely" in his need to work pro se and these were just rules that he did not discover at the appropriate time to achieve justice. But Respondent used about ten Justice Department lawyers to obstruct justice with unlimited budgets. The adversary system was not intended to be manipulated in this manner and application of Rule #60(b)(6) is warranted in the interest of true justice.

LEGAL ARGUMENT, VACATE JUDGMENT:

Petitioner apologizes for his amateurish legal argument below but it is of substance and the best that he can supply. What the argument shows is simply that in this case Rule 60(b)(6) must be invoked to vacate judgment below. This is true because Petitioner litigated under the law while Respondent and his counsels litigated outside the law.

Rule #60(b)(6) applies here as this is not a case of mere neglect or even gross neglect by Respondent and his attorneys. This is simply a case of bad faith litigation to mislead appeal bodies and courts through misuse of the privilege of ASSUMPTION OF TRUTH under the protection of sovereign immunity to exterminate the rights of Petitioner under the Constitution in violation of all rules of law that founded the United States – which is inexcusable.

Petitioner cites *Boughner v. Secretary of H.E.W.* (CA3d,1978) 572 F.2d 976 where plaintiff's original attorney, Krehel, failed to oppose a motion of defendant. It was alleged that Krehel failed to oppose the motion because: (1) he was involved in a judicial campaign; (2) he lost his secretary; and (3) he had a large backload of cases. According to the Court, Krehel's conduct indicated neglect so gross as to be inexcusable. As a result the circumstances were deemed sufficiently exceptional and extraordinary so as to mandate relief under Rule 60(b)(6). See page Volume 7 of Moore's Federal Practice, page 60-286, Section 60.27[2] on ANY OTHER REASON, 60(b)(6).

Comparing *Boughner* with *Bergman* is almost impossible in scope. In this Petitioner's case, Respondent's counsel hoaxed the Court of Claims and the Court of Appeal for the Federal Circuit for which he demanded and received sovereign immunity 3.5 years later.

And this very Supreme Court of the United States was exposed to pleadings in bad faith by Respondent's counsel in 1985 as shown above. There is just no way to equate the "Mandated Relief" under Rule 60(b)(6) as in *Boughner* with the almost unbelievable circumstances under *Bergman*, which should more than mandate relief under Rule 60(b)(6) or in the alternative, reverse the Court of Claims.

The U.S. Supreme Court ruling in *Klapprott v. U.S.*, 335 U.S. 601 at 609 (1948) states: "Amended rule 60(b) authorizes a court to set aside 'a void judgement' without regard to the limitation of a year applicable to motions to set aside on some other grounds," and at 613:

> "it is contended that the one-year limitation bars Petitioner on the premise that the petition to set aside

> the judgement showed, at most, nothing but 'excusable neglect'. But petitioner may avail himself of the broad 'any other reason' clause of 60(b) because petitioner shows factually most extraordinary circumstances which cannot constitute 'neglect' on his part".

This Petitioner's motion to vacate judgement under Rule 60(b)(6) shows not excusable neglect but hoax on the Courts under sovereign immunity, most extraordinary circumstances, and so vacating judgement under Rule 60(b)(6) is substantially warranted. Citing *Lepkowski v. United States Department of Treasury,* 804 F.2d 1310 (D.C.Cir. 1986) at 1311, Federal courts key number 657: "Post Judgement motions under rule which provides relief from judgement or order do not toll time for appeal of underlying judgement. Fed.Rule Civ.Proc. Rule 60(b), 28 U.S.C.A." from Moore's Federal Practice Volume 7.

In *Laskey v. Continental Products Corp.,* 804 F.2d 250 (3rd Cir. 1986) there is referenced Moore's Federal Practice. Section 60.19, pages 60-164, 60-165 of Moore states: ". . . the procedure provided by Rule 60(b) is not a substitute for an appeal; the Rule should be liberally construed for the purpose of doing substantial justice." This refers to

> ". . . deciding cases on the merits outweighs the interest in orderly procedure and in the finality of judgements, and whether there is merit in the defense or claim, as the case may be; if relief is sought from a judgement rendered after trial on the merits, whether the movant had a fair opportunity to present his claim or defense; whether there are any intervening equities which make it inequitable to grant relief; and any other factor that is relevant to the justice of the judgement under attack; . . . "

See also, Federal Civil Procedure Key #2641, #2651:

> "Rule conferring broad discretion of the trial court to grant relief when appropriate to accomplish judgement is properly invoked where there are extraordinary circumstances, or where the judgement may work extreme hardship, and should be liberally construed when substantial justice will thus be served. Fed.Rule Civ.Proc. Rule 60(b)(6) 28 U.S.C.A."

In Moore, section 60.27(2) on page 60-283 it states:

> "Under the *Klapprott* doctrine special circumstances may exit that justify the Court in treating the failure to answer as under compulsion of circumstances rather than through neglect, thus bringing the motion within Rule 60(b)(6). So, too, when a litigant appears pro-se, any negligence is likely to be personal, though conceivably it could be due to negligence of his agents. In such cases good reason may exist for relaxing to some extent the standard of alertness that might be supposed to apply to a member of the bar."

It was not until three and a half years after the 1981 trial, at the end of 1984, that the 10th Circuit Court of Appeals upheld the sovereign immunity plea of Respondent in this case for litigating in, according to Respondent's own District Court Motion to Dismiss where he pleads:

> ". . . misrepresentation, deceit, libel or slander. The same would be true of perjury or an (Justice Department) attorney's misrepresentation of the law to the Court." (Parenthesis clarification here by Petitioner).

Furthermore, Respondent's own motion specifically claims these litigation methods as INTENTIONAL TORT and as the grounds for his seeking of sovereign immunity under Federal Tort Claims Act § 2680(h). This was his claim, not Petitioner's.

In *L.P. Steuart, Inc. v. Matthew* (CA DC, 1964) 329 F.2d 234, 8 FR Serv2d 60b.31, Case 1, *cert. denied* (1964) 379 U.S. 824, 85 S. Ct. 50, 13 L. Ed.2d 35, plaintiff's case was

dismissed for failure to prosecute. Two years later, through different counsel, plaintiff filed a motion to vacate the judgement for a number of apparently personal reasons. The District Court denied the motion but the Court of Appeals reversed, holding that under the circumstances the District Court had abused its discretion in denying relief under Rule 60(b)(6).

In relation to the Court of Appeals for the Federal Circuit usurping power to deny correction of the clandestine court document sabotage of Petitioner's response brief, addressed above, Moore's Federal Practice, section 60.25[2] page 60-227 states: "If, however, the court's action involves a plain usurpation of power, the court's judgement is void, even though it has the requisite jurisdiction over the parties or res, as the case may be." To the best of Petitioner's knowledge NO APPEALS COURT HAS THE POWER TO RULE ON THE CONTENTS OF THE RECORD THAT IT IS ABOUT TO REVIEW FROM THE COURT BELOW. Petitioner submitted his motion to correct the sabotage to the court below, which never ruled on the motion. It was the Chief Judge of the Appeals Court that usurped power and denied correction in October of 1982.

The Court of Appeals for the Ninth Circuit has held third party fraud a basis for a motion under Rule 60(b)(6) but also held that the question of reasonable time is not governed by the one-year limitation. Petitioner believes that "third party" applies here to the respondent's attorney.

How can a one year limitation apply to this petitioner when it took three and a half years to establish respondent's sovereign immunity for intentional litigation in bad faith before the U.S. Court of Claims and the U.S. Court of Appeals for the Federal Circuit?

Citing *Schauss v. Metals Depository Corp.*, 757 F.2d 649 (1985) at 655:

> "in simple English, the language of the 'other reason' clause (sub-section (6)), for all reasons except the five particularly specified, vests power in courts adequate to enable them to vacate judgment whenever such action is appropriate to accomplish justice." *Klapprott v. United States*, 335 U.S. 601, 69 S.Ct. 384, 93 L.Ed. 266 (1948).

The broad of clause (b) gives the court ample power to vacate judgement whenever such action is appropriate to accomplish justice. *L.M. Leathers' Sons v. Goldman*, 252 F.2d 188 (6th Cir. 1958); 3 Barron & Holtzoff, Federal Practice and Procedure §§ 1329 (Wright ed. 1958) "(C)lause (6) is a grand reservoir of equitable power to do justice in a particular case when relief is not warranted by the preceding clauses." 7 MOORE, *supra.* § 60.27[3], at 308. This court has recognized and implemented wide equitable force and effect for rule 60(b)(6). *Bros. Inc. v. W.E. Grace Mfg. Co.*, 320 F.2d 594 (5th Cir.,1963); *Laguna Royalty Co. v. Marsh*, 350 F.2d 817 (5th Cir. 1965). *Id.* at 248.

Federal Rule of Civil Procedure Key # 2656, a rule relating to relief from judgement based on mistakes or excusable neglect is to be considered liberally, Rule 60(b) 28 U.S.C.A. yet none of the facts in the extraordinary circumstance summarized here wears the mantle of mistake or excusable neglect. Everything shown in this brief is extraordinary and addresses actions which are capricious, deceitful, in bad faith and caused Petitioner's economic destruction and extreme hardship through a monumental miscarriage of justice.

LEGAL ARGUMENT, LAW VIOLATIONS-RIF CANCELLATION

In light of knowing the admission of Respondent that the entire RIF laws of 5 C.F.R. Chapter #351 (1973) were ignored, we note that Federal agencies must follow their own regulations and a discharge brought about in violation of those regulations is invalid and cannot stand. *Service v. Dulles*, 354 U.S. 363 (1957) and *Bray v. U.S.*, 515 F.2d 1383, 207 Ct.Cl. 60 (1975). The violation of a single regulation is sufficient to the separation action, so long as it is substantial and prejudicial. *Henderson v. U.S.*, 175 Ct.Cl.690 (1966) *cert. denied* 386 U.S. 1016 (1967); *Pascal v. U.S.*, 211 Ct.Cl. 260, 543 F.2d 1284 (1976) and *Rasmussen v. U.S.*, 211 Ct.Cl. 260, 543 F.2d 134 (1976).

Here not just a single violation is the subject, but the entire Civil Service law was ignored with all of its applicable sections to RIF.

Full hearing rights may attach, as was not done in this case, if the RIF is but a disguised dismissal for reasons personal to the released employee, *Rasmussen v. U.S., supra*, and *Fitzgerald v. Hampton*, 467 F.2d 755 (U.S.D.C.1972). The failure to accord the plaintiff in a RIF proceeding a significant procedural right mean that the RIF cannot be enforced. *Rasmussen v. U.S., supra*. cf. *Kozart v. U.S.*, 458 F.2d 39 (Ct.Cl. 1972), *Newman v. U.S.*, 143 Ct.Cl. 784, 798-99 (1958). Here none of Petitioner's rights were observed.

Federal employees have a constitutionally protected property right (Due Process) on tenure afforded by 5 C.F.R. 752.104 et seq. and 5 U.S.C. 7501 and the Fifth Amendment to the Constitution, *Arnet v. Kennedy*, 416 U.S. 134, 94 S.Ct. 1633 (1974), *Board of Regents v. Roth*, 408

U.S. 564, 92 S.Ct. 2701 (1972), thus under these circumstances the Constitution guaranteed this Petitioner his job.

Backpay for unwarranted personnel actions is covered by 5 U.S.C. 5596(b), *Ainsworth v. U.S.*, 185 Ct.Cl. 110, 399 F.2d 176 (1968). But let us not forget the essence of this case for here Respondent totally ignored the entire law controlling Reduction-In-Force, so he violated all principles of litigation to mislead the highest courts in the land to cover the tracks of his folly. It is unthinkable that with this admission of complete disregard of United States Civil Law the verdict of the 1982 Court of Claims can stand!!!

DENIAL OF DUE PROCESS

The United States Supreme Court has stated that perjured, contrived, or suppressed evidence favorable to a party is a violation of due process of law. *Mooney v. Holohan*, 294 U.S. 103 at 112, 55 S.Ct. 340 at 342, *Brady v. State of Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963).

The good or bad faith of the prosecutor is not at issue. The issue is fair hearing and suppression of evidence violates fair hearing standards. *In re Ferguson*, 96 Cal. Rptr. 595, 487 P.2d 1234 (1971). Failure to disclose testimony favorable to the defendant (or the plaintiff in this case) was a violation of fair hearing standards. *People v. Ruthford*, 121 Cal. Rptr. 216, 534 P.2d 1341 (1975).

All of the following apply to *Bergman, supra:*

In *U.S. v. Bouziden*, 108 F.Supp. 395 (1952) the court noted that the purpose of a hearing is to enable a hearing officer (The CSC Appeals Authority and the Courts in this case) to form an intelligent opinion (108 F.Supp. at 398). Where this information is withheld from the party

at risk which affects the decision, the hearing is a sham. *U.S. v. Bouziden, supra,* also *Gonzales v. U.S.,* 348 U.S. 407, 75 S.Ct. 409 (1955), and in *Crotty v. Kelley,* 443 F.2d 214 (5th Cir. 1971), *Rasmussen v. U.S.,* 543 F.2d 134, 139, 211 Ct.Cl. 260 (1976).

In light of all Court cases cited in precedent and *Klapprott, supra,* and the facts in this case shown above through government admissions and pleadings of sovereign immunity, the 1982 judgement of the Court of Claims is a void judgement under any scrutiny or analysis. Such contaminated administrative appeal and court proceedings constitute a total denial of due process under the Constitution of the United States and they violate all of a citizen's constitutional and civil rights and this very Court has recognized this fact through its prior decisions and those cited above.

CONCLUSION

This Petitioner's claim is meritorious. The Courts below are in error by not vacating the void judgement of 1982 since the decisions below ignored Respondent's admissions through his bad-faith litigation under sovereign immunity. Government litigation in bad faith under sovereign immunity guarantees judgement for the government and that is not justice. Petitioner has done nothing wrong, but the erroneous judgement in this case caused an upheaval of disasters on Petitioner which equals his experiences in Germany before the war. As a result in America he lost his professional career, his home, his earning power, his health and everything he had worked for in his entire life, for no reason that he can understand.

Respect for the U.S. judicial system and the Courts is destroyed when even the Supreme Court of the United States is attacked by Respondent as in 1985, cited above.

This is the only Court in the land with power to end this destruction of constitutional litigation and restore substantial justice.

PRAYER FOR RELIEF

Petitioner Ralph Roger Bergman prays that this Court will hear him and grant his petition for a writ of certiorari.

In the alternative Petitioner prays that this Court will strike down the 1982 void judgement of the Court of Claims, reverse the case for this Petitioner and make any other awards that it believes appropriate under the circumstances shown. This Court has the power to do so under the authority of U.S.C. § 1651 to "issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law."

Respectfully submitted,

RALPH ROGER BERGMAN
appearing Pro-Se
750 30th Street
Boulder, Colorado 80303
Tel: (303) 449-7776

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

88-1402

RALPH ROGER BERGMAN,

Plaintiff-Appellant,

v.

THE UNITED STATES,

Defendant-Appellee.

JUDGMENT

ON APPEAL from the United States Claims Court
in CASE NO(S). 84-78
This CAUSE having been heard and considered, it is ORDERED and ADJUDGED: Affirmed

ENTERED BY ORDER OF THE COURT

DATED DEC. 15 1988

/s/ Francis X. Gindhart
Francis X. Gindhart, Clerk

ISSUED AS A MANDATE: January 5, 1989

APPENDIX B

ORIGINAL

IN THE UNITED STATES CLAIMS COURT

No. 84-78

(Filed: March 9, 1988)

RALPH ROGER BERGMAN

v.

THE UNITED STATES

ORDER

This matter comes before the court on the motion filed by Ralph Roger Bergman for relief from the judgment entered in *Bergman v. United States*, No. 84-78 (Cl. Ct. 1982), *aff'd*, 706 F.2d 319 (1983).

Plaintiff cites the opinion in *Bergman v. United States*, 751 F.2d 314 (10th Cir. 1985), as indicating that the government has pleaded to "deliberate tort" with respect to the cited Claims Court litigation. The opinion of the Circuit Court has been carefully examined and it is noted that the "intentional tort" language, 751 F.2d at 317, is addressed to "Bergman's claim," not to any admission by the government as to the validity of the merits underlying the claim. The Circuit Court opinion provides no basis for action to deprive the 1982 Claims Court judgment of finality.

The remainder of plaintiff's motion constitutes, essentially, an effort to retry the Claims Court or Federal Circuit Litigation. At this late date, plaintiff does not set

forth any extraordinary circumstances justifying relief from a 1982 judgment which dealt with events now well over 10 years old. *See Kaiser Aluminum & Chemical Corp. v. United States*, 409 F.2d 238, 187 Ct. Cl. 443 (1969); *Thompson v. United States*, 223 Ct. Cl. 680 (1980); *Wilfong v. United States*, 227 Ct. Cl. 709 (1981); *Pfotzer v. United States*, 231 Ct. Cl. 794 (1982).

As no valid basis for post-judgment action has been shown, it is ORDERED that plaintiff's motion is denied.

/s/ James F. Merow
James F. Merow
Acting Chief Judge

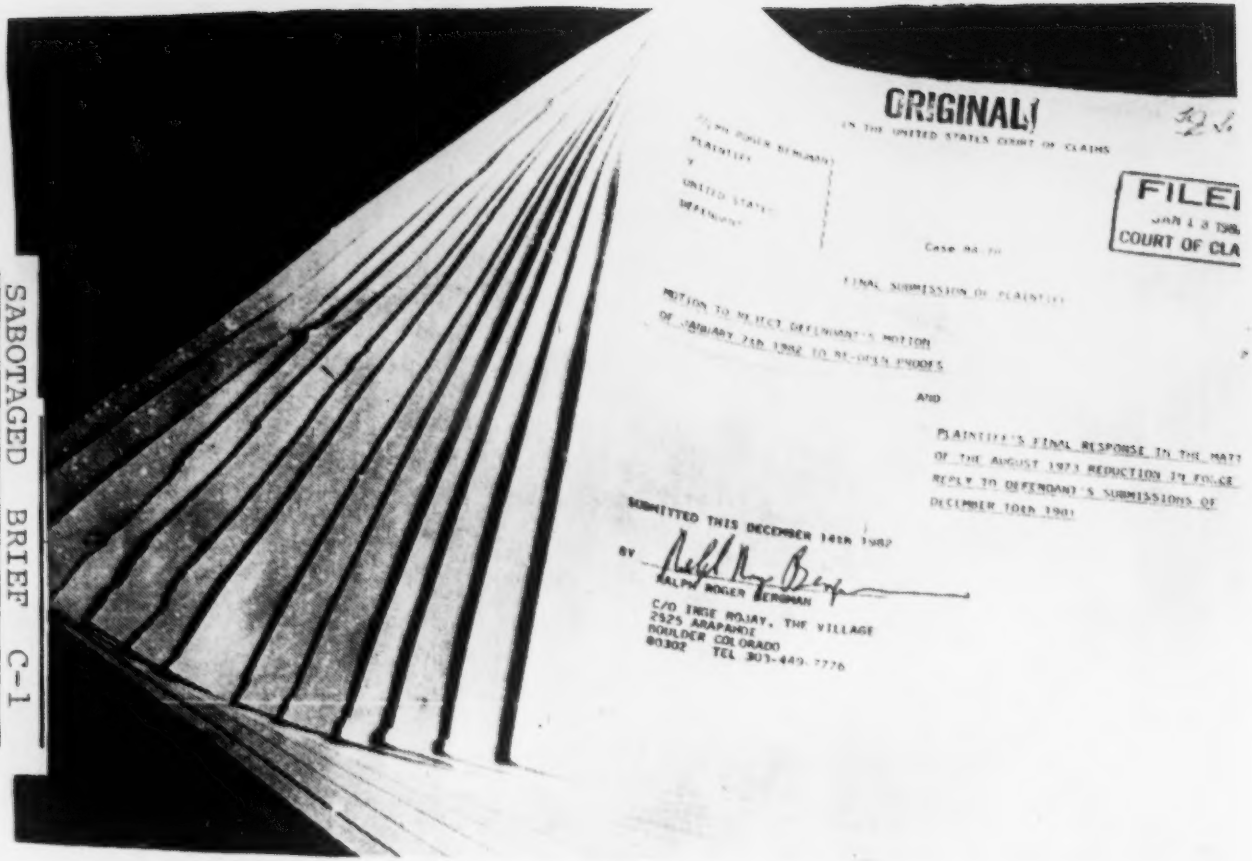
APPENDIX C:

Appendix C consists of three photographs of the Petitioner's post trial response brief written in opposition to Respondent's proposed findings of fact and conclusions of law which Petitioner had submitted to the Court of Claims.

The first photograph, C1, shows the 12 pages retained in the record dealing with Petitioner's opposition to the Court-initiated one day "Roy Bean" trial for the purpose of re-opening proofs for to change the evidence in favor of Respondent. The photo shows the jagged edges of the pages where this part of the submission was chopped out apparently with a sharp instument like possibly a razor.

The second Photograph C2 shows the table of contents that was separated from the first 12 pages retained in the record which would to prevent an examiner form realizing that the entire response brief was missing. The remainder of the brief, starting with page 13 is Petitioner's objection to Respondent's proposed findings of fact and conclusions of law, with its contents addressed in the decapitated table. The cut-up remains of the first 12 pages left in the record (C1) are still bound to the discarded and now unidentified brief and the jagged edges match perfectly.

The third photograph, C3, is an enlargement to the lower part of C2 showing clearly how the brief was cut away. That is how Respondent silenced Petitioner's voice in opposition.



ORIGINAL

IN THE UNITED STATES COURT OF CLAIMS

FILED
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COURT OF CLA

Case No.

FINAL SUBMISSION OF PLAINTIFF

MOTION TO REJECT DEFENDANT'S MOTION
OF JANUARY 7th 1982 TO RE-OPEN EVIDENCE

AND

PLAINTIFF'S FINAL RESPONSE IN THE MATT
OF THE AUGUST 1973 REDUCTION IN POLICE
REPLY TO DEFENDANT'S SUBMISSIONS OF
DECEMBER 10th 1981

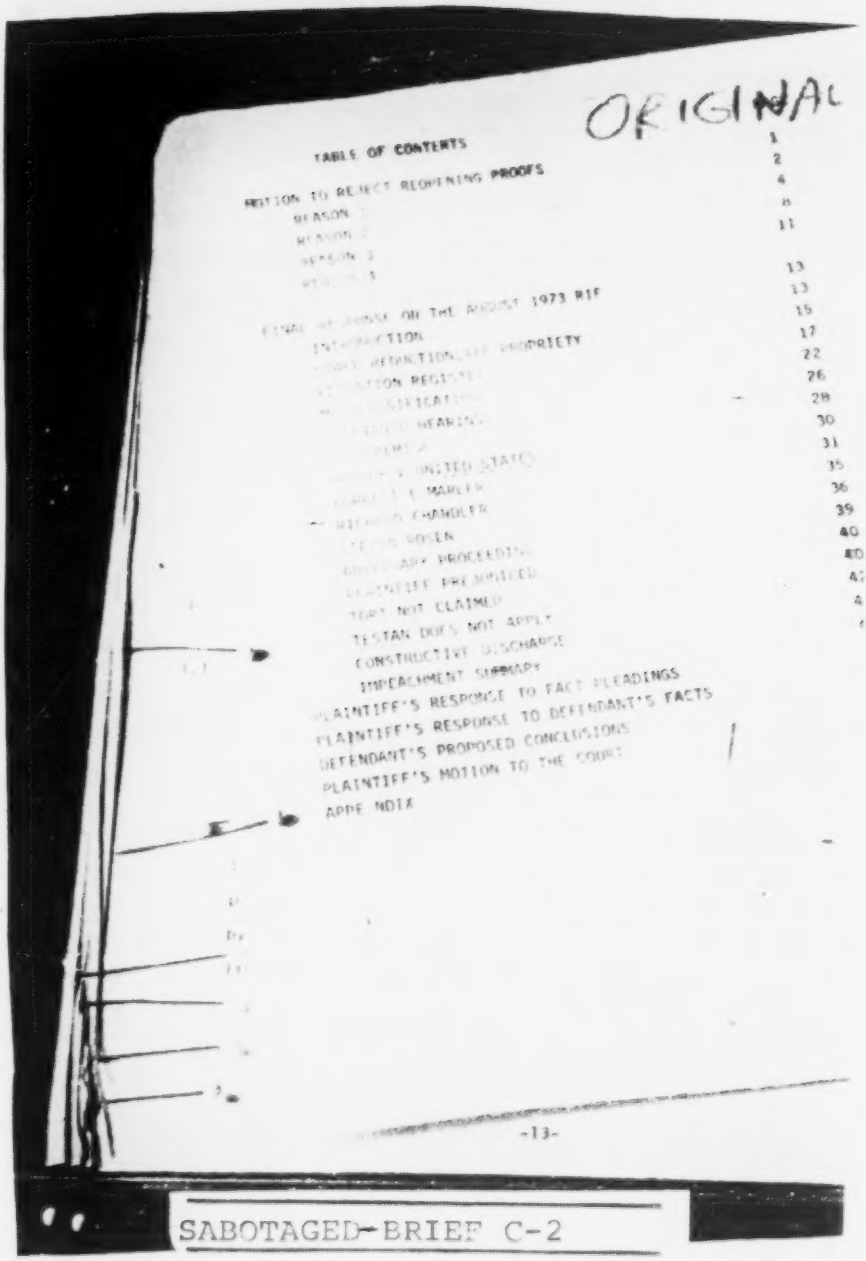
SUBMITTED THIS DECEMBER 14th 1982

BY _____
RALPH ROGER BERMAN

C/O INGE ROJAY, THE VILLAGE
2525 ARAPAHOE
BOULDER COLORADO
80302 TEL 303-449-7776

SABOTAGED BRIEF C-1

App. 5

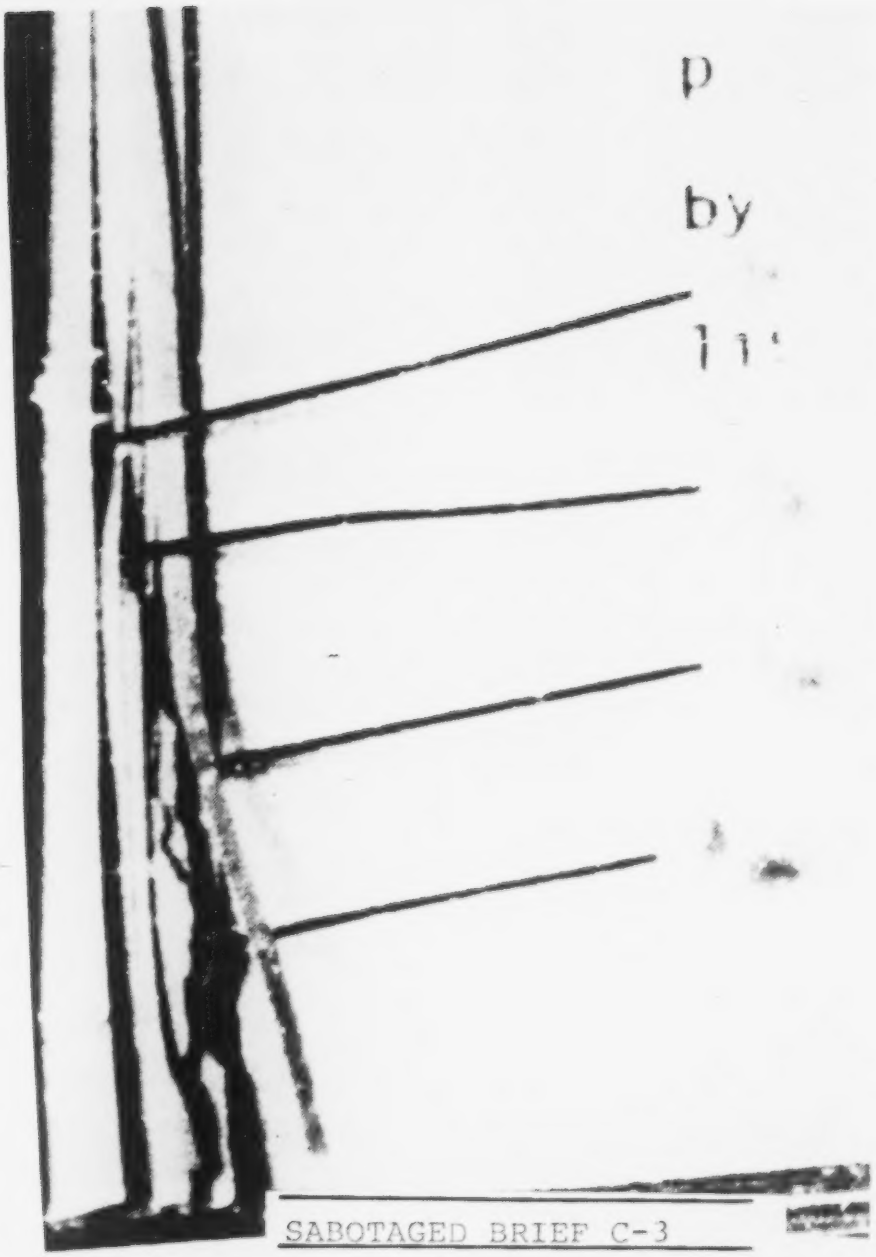


ORIGINAL

TABLE OF CONTENTS

MOTION TO REJECT REOPENING PROOFS	1
REASON 1	2
REASON 2	4
REASON 3	6
REASON 4	11
[illegible] ON THE AUGUST 1973 RIF	13
INTRODUCTION	13
[illegible] REDUCTION-[illegible] PROPRIETY	15
[illegible] REGISTER	17
[illegible] CLASSIFICATION	22
[illegible] HEARING	26
[illegible]	28
[illegible] UNITED STATES	30
[illegible] MARLER	31
[illegible] CHANDLER	35
[illegible] NOREN	36
[illegible] PROCEEDING	39
PLAINTIFF PREJUDICED	40
[illegible] NOT CLAIMED	40
TESTAN DOES NOT APPLY	42
CONSTRUCTIVE DISCHARGE	4
IMPEACHMENT SUMMARY	4
PLAINTIFF'S RESPONSE TO FACT PLEADINGS	
PLAINTIFF'S RESPONSE TO DEFENDANT'S FACTS	
DEFENDANT'S PROPOSED CONCLUSIONS	
PLAINTIFF'S MOTION TO THE COURT	
APPENDIX	

SABOTAGED-BRIEF C-2



SABOTAGED BRIEF C-3